

STATE OF NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
10 DHC 19

WAKE COUNTY

The NORTH CAROLINA STATE BAR,
Plaintiff,

v.

ANSWER

MARCIA Y. BURTON, Attorney
Defendant.

COMES NOW Defendant and for answer to the Complaint filed herein, states as follows:

1. Admitted.
2. Admitted.
3. Admitted
4. Admitted.
5. Admitted in Part. If clients did not obtained the credit counseling and submit it to me directly, I would obtained it for filing with the Court.
6. Admitted.
7. Admitted.
8. Admitted in Part-Many of my clients either went through Hummingbird Credit Counseling or Personal Finance Education. If they did not obtain the certificates themselves, which some of them did, then I would obtain the certification directly from the agency providing the counseling.

9. Denied. Most times I did not collect the monies in advance and instead paid them out of my pocket directly to ensure that clients' cases would proceed in Bankruptcy Court as scheduled.
10. Denied.
11. Denied. If I received the \$34.00 payment after I paid for the course out of pocket, I would then deposit the money into my personal account to reimburse myself.
12. Denied.
13. Denied.
14. Denied.
15. Admitted.
16. Admitted in Part. I filed two separate Chapter 13 cases on behalf of Mr. Gerald McDougle.
17. Admitted in Part. Mr. McDougle paid \$650.00 for attorneys fees for the first case but no fees were charged to him for the second case filed.
18. Denied. The total paid by Mr. McDougle was \$958.00 but that included his filing fee. Only \$650 was collected for attorney's fees.
19. Admitted.
20. Admitted.
21. Denied.
22. Admitted though I am not aware of the exact date Mr. Peete became unemployed.
23. Denied. in its entirety.
24. Admitted.
25. Denied. in part. Mr. Peete conveyed to the Trustee that he was no longer employed.
26. Denied.
27. Admitted.
28. Admitted.
29. Admitted in Part. There was no valid legal defense to which I could have responded to the motion. The motion for relief for stay was based upon nonpayment of automobile payments. Prior to filing the Bankruptcy petition, I advised Ms. Hernandez that in order for her to possess her vehicle she would need to ensure that she remained current on the

payments. After the Motion for Relief was filed, I contacted the If I had, it would have been only

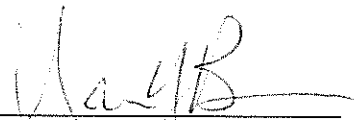
30. Admitted in Part-the motion for reconsideration was filed based upon Ms. Hernandez's assertions that she had in fact made the car payments required of her since her bankruptcy filing and had proof of such payments. However, I did not obtain proof that all payments had been made and had been made timely. I did or had my assistant contact the Court to have the matter removed from the docket as again, I had no defense to the original motion.
31. Admitted.
32. Admitted in Part- Prior to the expiration of the 45 date deadline for Ms. Hernandez to complete the financial management course, I along with my assistant, made numerous attempts to reach Ms. Hernandez to advise her that the course needed to be taken. It was only after her case was closed without discharge that Ms. Hernandez contacted me regarding her financial management course.
33. Defendant is without information to confirm or deny the allegation so the same is Denied.
34. For the aforementioned reasons this allegation is Denied.
35. Admitted in Part- Denied in Part-After returning from inpatient status at a rehabilitation center for Alcohol treatment, I learned that the Bankruptcy Trustee added ms. Hernandez's matter to his original motion, as outlined in below allegations and thus I took no action on her case as it was to go before the Chief Bankruptcy Judge for Western District of North Carolina.
36. Admitted.
37. Admitted.
38. Admitted in Part, Denied in part-The Scotts were advised as all clients are that a certificate of credit counseling would need to be obtained prior to filing their Bankruptcy Petition. A list of counseling providers were provided to the Scotts prior to their filing their Bankruptcy Petition. All debtors, pursuant to Bankruptcy Rules are required to take the credit counseling course prior to filing but each debtor is given 15 days from the date of filing on order to submit the actual certificate. No false statements were made, I was led to believe that the course had been completed and was awaiting the certificate at the time the Bankruptcy Petition was filed.

39. Denied . It was not until I was notified until the Bankruptcy Trustee sought dismissal of the case for failure to take the counseling, that the counseling had not been completed.
40. Denied. There was no action to take since it was automatic that the petition would be dismissed since there was no cause, as outlined in the Bankruptcy Rules, for the Scotts failure to complete the course.
41. Admitted. Due to communication issues regarding the counseling requirements, I re-filed, at my own expenses, another Bankruptcy Petition for the Scotts.
42. Denied. The software program used to generate the Scotts second filing did not include the prior filing. However, there was no intent to mislead or defraud the Court. It was simply an administrative error that was resolved.
43. Denied.
44. Admitted.
45. Admitted.
46. Admitted.
47. Denied.
48. Admitted. Though the outside of the envelope contained the notice that this was a letter of advertisement is capitalized bold-font letters, the allegation regarding the actual letters is correct.
49. Admitted.
50. Denied. Those portions addressed issues for Chapter 13 Bankruptcy clients.
51. Admitted in Part. Earlier versions of the legal contract did contain this language. Though it should be noted that not once during any point during my practice before the Bankruptcy Court, did I ever withdraw from any client's matter without Court permission.
52. Admitted.
53. Admitted in Part. The contract was a form letter compiled from a number of sources. However, there was never any intent to mislead clients with the contract. Defendant acknowledges that clear contract should have been utilized.
54. Admitted
55. Admitted
56. Admitted

57. Admitted in Part. In a misguided attempt to help clients who were in serious financially dire circumstances, I accepted partial payments for my fees. I also acknowledged this conduct, which was a violation of the Bankruptcy Rules before the Bankruptcy Court.
58. Admitted.
59. Admitted
60. Defendant is without information to admit or deny the allegations contained therein, as such, the same is Denied.
61. Defendant is without information to admit or deny the allegations contained therein, as such, the same is Denied.
62. Admitted. A hearing was conducted within a relatively short period of time following my discharge from a 28 day in patient treatment facility. A decision regarding that hearing was subsequently entered eight months later by Judge Whitley from the Western District Bankruptcy Court.
63. Defendant is currently without information to admit or deny the allegations. As such, the same is Denied.
64. Admitted.
65. Defendant is currently without information to admit or deny the allegations. As such, the same is Denied.
66. Admitted.
67. Admitted.
68. Admitted. Defendant promptly responded when she became aware of the grievance.
69. Denied.
70. Admitted in Part. Defendant did not receive any further emails regarding this situation so was unable to respond.
71. Denied. for the reasons set forth in #70 above.
72. Admitted in Part. The fees paid by Mr. Gaddy were not simply attorney's fees but also included the filing fee for his Bankruptcy. Mr. Gaddy did not pay the Defendant's full attorney's fees for handling his bankruptcy.
73. Admitted.
74. Admitted. The portion of the fee that Mr. Gaddy paid had already been earned and the filing fee for his bankruptcy was non refundable by the Bankruptcy Court.

75. Admitted in Part. However prior to the dispute being referred to the Mecklenburg County Bar Fee Dispute Resolution Center, the matter was added to a grievance filed and a response was promptly submitted to the Plaintiff's attorney addressing Mr. Gaddy's matter that was pending before the North Carolina State Bar.
76. Denied. I did receive a letter regarding Mr. Gaddy's complaint. However, as I had promptly responded to the NC State Bar regarding Mr. Gaddy's grievance, I was unaware that I would also be required to address the same grievance with the Mecklenburg local Bar.
77. Denied.

WHEREFORE, Defendant having answered Plaintiff's Complaint requests to be notified of the time and date of hearing and be allowed to present evidence in support of her responses herein.



Marcia Y. Burton
8037 Pike Rd. #1122
Charlotte, NC 28262
(704) 609-6888

CERTIFICATE OF SERVICE

This is to certify that on or about May 25, 2010, I caused a copy of the attached Defendant's Answer to Complaint to be served upon the following persons by U.S. First Class Mail and alternatively by overnight shipping service:

Carmen Hoyme Bannon
Attorney for Plaintiff
The North Carolina State Bar
PO Box 25908
Raleigh, NC 27611

Office of the Secretary of the North Carolina State Bar
208 Fayetteville St.

Raleigh, NC 27601

This the 25th day of May 2010.

A handwritten signature in cursive script, appearing to read 'Marcia Y. Burton', written over a horizontal line.

Marcia Y. Burton
8037 Pike Rd. #1122
Charlotte, NC 28262
(704) 609-6888